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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,046	08/30/2007	Thomas McGee	102790-162-30108US	1146

7590 01/30/2009
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EXAMINER

CERNOCH, STEVEN MICHAEL

ART UNIT	PAPER NUMBER
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3752

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01/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,046	Applicant(s) MCGEE ET AL.
	Examiner STEVEN CERNOCH	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/18/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(a) as being anticipated by E.R. Ellis and Associates, Inc. (PCT WO 03/086483 A2).

Re claim 1, Ellis shows an apparatus adapted to disseminate volatile liquid into an atmosphere (abstract, lines 1-2), the apparatus comprising a reservoir containing the liquid (lines 8-9), and a porous evaporative member that extends from the liquid into the atmosphere (line 2), the reservoir being directly open to the atmosphere only by means of a pressure equalization vent (lines 19-20), which vent is equipped with closing means that obstructs the vent to an increasing degree with increasing atmosphere temperature (lines 21-24), optionally closing it completely.

Re claim 2, Ellis shows the closing means comprises a temperature-responsive moving member, and a closure member attached thereto (abstract, lines 19-24).

Re claim 3, Ellis shows the temperature-responsive moving comprises a member that deforms under increasing temperature, such that the closure member moves in an appropriate vent-restricting direction (abstract, lines 19-24).

Re claim 4, Ellis shows the temperature-responsive moving member is a single component that deforms with rising temperature to a degree sufficient to give the desired degree of closure (abstract, lines 14-16).

Re claim 5, Ellis shows the temperature-responsive moving member is a coil spring (abstract, lines 16-18).

Re claim 6, Ellis shows the temperature-responsive moving member is a bimetallic member (abstract, line 17).

Re claim 7, Ellis shows the bimetallic member is selected from a bimetallic strip (Fig. 1A, 3) and a bimetallic coil (abstract, line 17).

Re claim 8, Ellis shows the closure member is a needle valve (Fig. 13B, 124) that fits in a circular vent (Fig. 13C, 125, 135).

Re claim 9, Ellis shows the closure member is a cap that closes an orifice (Fig. 13B, 122).

Re claim 10, Ellis shows a method of disseminating a volatile liquid into an atmosphere from a porous evaporative member (abstract, lines 1-2), one end of which contacts the liquid in a reservoir (lines 8-9) that is sealed from direct contact with the atmosphere other than by a pressure equalization vent (lines 19-20), and the other end of which is open to the atmosphere, such that the quantity of liquid disseminated decreases with increasing temperature of the atmosphere, the method comprising the obstructing of the vent to an increasing degree with increasing temperature (lines 21-24).

Response to Arguments

Applicant's arguments filed 11/13/2008 have been fully considered but they are not persuasive. In response to applicant's arguments that Ellis provides an entirely different technology than that of applicant's invention, the claim language calls for a medium in a reservoir open to the atmosphere with a vent that varies it's openings with the varying temperature of said atmosphere which is exactly what Ellis describes in the abstract of the PCT provided. As admitted in applicant's own arguments, Ellis' medium is a fragrance which can be a gas, liquid or a solid. Therefore having a "medium" that is a fragrance can go to any of said states, therefore as long as the Ellis application teaches a reservoir, which it does, it reads on the claimed limitation. Ellis' porous evaporative member interacts with atmosphere by diffusing into it and therefore does extend into the atmosphere.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3752

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN CERNOCH whose telephone number is (571)270-3540. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./

Examiner, Art Unit 3752

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752